

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WHOLE WOMAN'S HEALTH, et al.,
Plaintiffs,

v.

CHARLES SMITH,
Defendant.

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Civil Action No. 1:16-cv-01300-DAE-AWA

STIPULATION

The parties, by and through undersigned counsel of record, state as follows:

1. Plaintiffs' Amended Complaint contains allegations regarding the monetary cost of complying with the challenged laws (Tex. Health & Safety Code §§ 697.001–697.009; 25 Tex. Admin. Code §§ 138.1–138.8; and the amendments to 25 Tex. Admin. Code §§ 1.132–1.137 published in 41 Tex. Reg. 9732-41 (Dec. 9, 2016)). *See, e.g.*, First Am. Compl. ¶¶ 91-95, 103-04. Plaintiffs now stipulate that they will not seek to introduce evidence concerning the monetary cost of compliance with the challenged laws, including the cost of collection, storage, transportation, and disposal of embryonic and fetal tissue remains. Plaintiffs further stipulate that they will not argue that the monetary cost of compliance with the challenged laws contributes to their alleged constitutional infirmity and hereby waive any argument in this lawsuit that the monetary cost of compliance with the challenged laws contributes to their alleged unconstitutionality. Neither party, therefore, will present evidence regarding the monetary cost of complying with the challenged laws or argue that the challenged laws are unconstitutional due to any monetary costs of compliance.

2. In exchange for the stipulation in Paragraph 1, Defendant will not seek discovery from Plaintiffs concerning the monetary cost of complying with the challenged laws. Defendant also will not present evidence concerning monetary costs of compliance.
3. Dr. Anne Layne-Farrar will not provide testimony in this matter. In exchange for the stipulation in Paragraph 1, (1) Defendant will not seek to obtain discovery from her; and (2) neither Dr. Layne-Farrar's testimony in the preliminary injunction hearing in this matter, nor her Declaration in support of Plaintiffs' motion for a preliminary injunction, ECF No. 6-6, is part of the trial record in this case.
4. This Stipulation does not limit any party's claims or defenses in this matter other than as expressly stated herein.
5. Notwithstanding any other provision herein: (1) Defendant reserves the right to seek discovery related to any monetary cost (including from Dr. Anne Layne-Farrar), to present evidence concerning the monetary cost of compliance, and to present arguments concerning any monetary cost, should any Plaintiffs or intervenors seek to present evidence in this lawsuit of the monetary cost of complying with the challenged laws, or argue that the monetary cost of complying with the challenged laws renders the challenged laws unconstitutional; and (2) no party is prohibited from presenting evidence regarding the Burial or Cremation Assistance Registry, Tex. Health & Safety Code § 697.005, or the Ethical Fetal Remains Grant Program, *id.* § 697.006, at trial.

SO ORDERED this ____ day of _____, 2018.

David A. Ezra
United States District Judge

/s/ Darren McCarty

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